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No. 06 - 253

FILED
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SUPREME COURT, U.S.

In The

Supreme Court of the United States

Stephen Carroll Collier,
Petitioner,

v.

Jim Pruett, individually,
John Tam, individually,
John Williamson, individually,
Susan Meredith, individually,
General Communications, Inc., and
Wells Fargo Bank,

Respondents.

On Writ Of Certiorari
To The United States Court of Appeals
For the Ninth Circuit

REHEARING OF ORDER DENYING WRIT OF CERTIORARI

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Jurisdiction of this instant Case arises under the Judiciary Act of 1789 as lawfully amended by the Electors of the several States and the Constitution of the United States.

Plaintiff in Error (*"Plff in Err"*) is enforcing a private right in this instant Case where the 9th Circuit incorrectly, thereby being a reversible error, affirmed the Anti-Injunction Act of 26 U.S.C. § 7421 that presumably prohibits an Injunction against the individually named Employees even when they are alleged to have violated the specific congressional mandate of 5 U.S.C. § 552(a)(1), which now acts as an insulator for potential wrongdoing by agency personnel. The § 7421 estoppel against suit was based upon the holding of *Enochs v. Williams Packing*, 370 U.S. 1 (1962), where the issue there was to enjoin the collection of federal *social security* and *unemployment taxes* against a corporation. *Enochs* has no application to the *Plff in Err* as he is not registered as a corporation and has not withheld FICA taxes nor is he bound by contract with the collection agency of the Social Security Act, being the IRS. Additionally, Williams Packing Inc. was not entitled to any of the privileges and immunities of the citizens of the several States as corporations are of a class that the Constitution does not recognize and as such have no constitutional rights, see *Ducat v. Chicago*, 77 U.S. 410 (1870). The *Enochs* case involves a subject-matter that is completely off-point to the *Plff in Err's* Case and convincingly shows that the dismissal was based on an unsound principle as a matter of law.

Furthermore, *the primary essential element* in the holding of the *Enochs* case is namely the *social security system*, i.e. 49 Stat 620 as amended ("SSA") and *unemployment taxes*. The *social security system* and *unemployment taxes* is only for "citizens of the United States" who make claim by oath to that specific allegiance and have made application for a federal benefit which is

when the United States creates rights in Individuals as found in 5 U..S.C. § 552a(2) & (13).

The Supreme Court of the United States has consistently held that when the United States creates rights (benefits) in Individuals against itself, the United States is under no obligation to provide any remedy through the courts of the United States and can withhold any remedy if Congress so chooses, see *U.S. v. Babcock*, 250 U.S. 328, 331; *Dismuke v. U.S.*, 297 U.S. 167; *Tutun v. U.S.*, 270 U.S. 568.

This Case is an Error in Law of which only the Supreme Court of the United States can and must correct arising under Article III in all Cases in Law and Equity exercising the judicial Power of the United States under the authority of the United States, as the *Plff in Err* has no Social Security Number in his true name as already plead; and, owes no allegiance to that of an abstract "citizen of the United States", but is a citizen of one of the several States with his Privileges and Immunities secured in Article IV Section 2 Clause 1; and, does not claim to have any rights as those created for Individuals due to the registration for a benefit from the United States. See *United States v. Cruikshank*, 92 U.S. 542, 554-55 (1875); *Slaughter-House Cases*, 83 U.S. 36, 75 (1872); *Corfield v. Coryell*, 6 F.Cas. 546, 551-52 (1823).

In the adjudged decision of *Almeida-Sanchez v. U.S.*, 413 U.S. 266, 272 (1973) it was held that "It is clear, of course, that no Act of Congress can authorize a violation of the Constitution." See *U.S. v. Villamonte-Marquez*, 462 U.S. 579, 585 (1983); *U.S. v. Watson*, 423 U.S. 411, 433 (1976); *U.S. v. Brignoni-Ponce*, 422 U.S. 873, 877-78 (1975); *U.S. v. Dobson*, 781 F.2d 1374, 1376 (9th Cir. 1986); *U.S. v. Spetz*, 721 F.2d 1457, 1470 (9th Cir. 1983). The *Plff in Err* in this Case has been methodically denied access to a constitutional court that exercises the whole judicial Power of the United States due to statutes that violate his Fifth Amendment rights. "Due process of law" does not include jurisdiction of law outside the several States when the citizen holds allegiance to a birthright from one of the several States of the Union. Such

is the case for this *Plff in Err*, who has collectively established his allegiance to that of being a "citizen of one of the several States" and not the undefined "citizen of the United States" as "**there is no such thing as a citizen of the United States**," see *Ex Parte Knowles*, 5 Cal. 300, 302 (1855) (stating the object of the exercise of naturalization is to make citizens of the respective several States). This analysis establishes the basis of this viewpoint as supported by the public record and guarantees within the Constitution.

In the adjudged decision of *Hepburn v. Griswold*, 75 U.S. 603, 611-12 (1869) it was explicated that the duty of the Supreme Court is to uphold the provision found in Article VI, Clause 2 that the Constitution, the Laws of the United States and Treaties shall be the supreme Law of the Land and no Act of Congress is entitled to violate it, to wit:

> Not every act of Congress, then, is to be regarded as the supreme law of the land; nor is it by every act of Congress that the judges are bound. This character and this force belong only to such acts as are 'made in pursuance of the Constitution.' ... When, therefore, a case arises for judicial determination, and the decision depends on the alleged inconsistency of a legislative provision with the fundamental law, it is the plain duty of the court to compare the act with Constitution, and if the former cannot, upon a fair construction, be reconciled with the latter, to give effect to the Constitution rather than the statute. This seems so plain that it is impossible to make it plainer by argument. If it be otherwise the Constitution is not the supreme law; it is neither necessary or useful, in any case, to inquire whether or not any act of Congress was passed in pursuance of it; and the oath which every member of this court is required to take, that he 'will administer justice without

> respect to persons, and do equal right to the poor and the rich, and faithfully perform the duties incumbent upon him to the best of his ability and understanding, agreeably to the Constitution and laws of the United States,' becomes an idle and unmeaning form.

Even though the Social Security System has been in operation for quite some time, *i.e.* since 1935, this can be of no excuse for violations of the Constitution of the United States as held in the adjudged decision of *United States v. Watson*, 423 U.S. 411, 433 (1976), to wit:

> [F]or it is well settled that the mere existence of statutes or practice, even though long standing, is no defense to an unconstitutional practice. "(N)o one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire national existence and indeed predates it."

In the adjudged decision of *Adkins v. Lyons*, 261 U.S. 525 (1923) the pronouncement was very clear, to wit:

> This court, by an unbroken line of decisions from Chief Justice Marshall to the present day, has steadily adhered to the rule that every possible presumption is in favor of the validity of an act of Congress until overcome beyond rational doubt. But, if by clear and indubitable demonstration a statute be opposed to the Constitution, we have no choice but to say so.

Where there are two interpretations of a statute each equally obvious, the cardinal rule of construction is that the one which is clearly in accordance with the Constitution is to be preferred, see *Knights Templars' & Masons' L. Indem. Co. v. Jarman*, 187 U.S. 197, 205 (1902).

The federal circuit court system found reason to dismiss the *Plff in Err's* Case based in part on the Act of

Congress of 28 U.S.C. § 2201. Examining § 2201 clearly establishes that this statute has been recast and revised from a Law of the United States to a class of statute that precludes citizens of the several States and precludes the "several States" by substituting it with the different term of "States."

Section 2201 credits the source of this Act of Congress to 62 Stat. 964, June 25, **1948** and the 1940 Code § 400 as revised from the act of Mar. 3, 1911, Ch. 231, § 274d.

Starting at the beginning of the historical enactments for Ch. 231, § 274d, one finds in the 1911 Judicial Code the heading "Provisions Common To More Than One Court," being Chapter 11, which includes sections 256 through 274. There is a jurisdictional statement for 36 Stat. 1160 at Sec. 256, being "The jurisdiction vested in the courts of the United States in cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the **several States**." (Emphasis added)

Section 274 of the Judicial Code of 1911, being under the Ch. 11 jurisdiction of the "several States," starts at 36 Stat. 1164 and includes amendments from later years. The next immediate one being 38 Stat. 956 (1915 Ch. 90) adding sections 274a, 274b and 274c; and, in 1934 another being Ch. 512 (48 Stat. 955) added retroactively to the Judicial Code of 1911 and designated section 274d. In 1935 Ch. 829 amended section 274d by adding after the words "actual controversy" the following words, "except with respect to Federal taxes." It was in 1935 that the SSA was enacted authorizing the IRS to enforce collections for the SSA's financial support.

Progressing to the 1940 Code, Ch. 10, Section 371, the jurisdiction was still of the "several States", to wit: "The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the **several States**."

In this 1940 Code Ch. 10 the jurisdiction of the "several States" were in the following sections being Sec. 396 (for sec. 274); and, Sec. 397 (for sec. 274a); and, Sec. 398 (for sec. 274b); and, Sec. 399 (for sec. 274c); and, Sec.

400 (for sec. 274d) with the added words of "except with respect to Federal taxes" included.

In the recasting of the 1948 Code, Ch. 646 at 62 Stat. 934 in Section 1355 we find significant changes by the omission of the "several States" to just "States," which evidences a change in jurisdiction, and the addition of "under any Act of Congress", to wit: "The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress." In the unambiguous language of 28 U.S.C. § 1366 we find "reference to laws of the United States **or** Acts of Congress" that is conclusive of the different jurisdictions bearing singular descriptive titles. A Congress for the several States arises under Article VI and is only empowered and authorized to enact " Laws of the United States which shall be made in Pursuance thereof." A Congress for the territories acts in two capacities, being that of a general (national) and a state government, to enact "Acts of Congress." But in the several States, Congress is bound to only a national capacity, enacting "Laws of the United States." See *The American Ins. Co. v. 356 Bales of Cotton*, 26 U.S. 511, 546 (1828). Section 2201 clearly opposes the Constitution and the jurisdiction of the several States.

The "several States" were established from the "original States" in the Articles of Confederation Articles IV, VIII and IX, Clause 7, and the term is used seven (7) times in the Constitution of the United States. Congress has no grant of authority to change the jurisdiction of the "several States" into territorial *"States,"* which only includes all of the possessions and D.C. as currently found in 26 U.S.C. §§ 42, 103, 115, 1397E, 3121, 3306, 5891 and 7701. See *Conner v. Elliott*, 59 U.S. 591, 593 (1855); *McCready v. Virginia*, 94 U.S. 391, 395-96 (1876). The district court issued judgment without the jurisdiction of "the several States" and therefore had no jurisdiction over the *Pltf in Err* with his citizenship of one of the several States thereby violating his Article IV, s2

protections. "The judgment must be rendered by a court legally constituted, having jurisdiction of the cause and the person. Without jurisdiction there is no validity or vitality to the judgment," see *Springer v. Shavender*, 23 S.E. 976, 978 (1896). It is well settled law that only the judicial department declares the law, being pronounced in *Marbury v. Madison*, 1 Cranch 137, 177 (1803), "(i)t is emphatically the province and duty of the judicial department to say what the law is." Sec. 2201 is evidence of an Act of Congress that is not "made in pursuance of the Constitution" as it is without the jurisdiction of any of the several States.

The *Plff in Err* labors greatly to have this court acknowledge the essential facts that "a distinction both in name and privileges is made to exist between citizens of the United States *ex vi termini* and citizens of the respective States. To the former no privileges or immunities are granted; and it will hardly be contended, that political *status* can be derived by implication against express legal enactments." See *Ex Parte Knowles* at 304 (emphasis in the original).

One of the many essential elements in the Constitutional Republic firmly established as inviolate is right of "due process of law" being in the Fifth Amendment.

The words 'due process of law,' when applied to judicial proceedings, as was held by Mr. Justice Field, speaking for this court in the adjudged decision of *Penoyer v. Neff*, 95 U.S. 714, 733 (1877), to wit:

> [M]ean[s] a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution - that is, by the law of its creation - to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought

> within its jurisdiction by service of process within the state, or his voluntary appearance.

See also *World-wide Volkwagen Corp. v. Woodson*, 444 U.S. 286, 291+ (1980); *Richards v. Jefferson, Ala.*, 517 U.S. 793, 797(1996); *U.S. v. Morton*, 467 U.S. 822, 828+ (1984).

Further in *Neff, supra. ibid at 722,* every one of the several States has **exclusive jurisdiction** and sovereignty over persons and property within its territory, to wit:

> The several States of the Union are not, it is true, in every respect independent, many of the right and powers which originally belonged to them being now vested in the government created by the Constitution. But, except as restrained and limited by that instrument, they possess and exercise the authority of independent States, and the principles of public law to which we have referred are applicable to them. One of these principles is, that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory. As a consequence, every State has the power to determine for itself the civil *status* and capacities of its inhabitants; to prescribe the subjects upon which they may contract, the forms and solemnities with which their contracts shall be executed, the rights and obligations arising from them, and the mode in which their validity shall be determined and their obligations enforced; and also to regulate the manner and conditions upon which property situated within such territory, both personal and real, may be acquired, enjoyed, and transferred.

The *Plff in Err* in this instant case is domiciled within the territorial boundaries of Alaska and his property is only within these boundaries. Yet, the courts of Alaska were not

allowed retain cognizance of the Case as it was removed to the USDC, which is without the original jurisdiction of the United States, that resulted with a judgment where the USDC used statutes that had no jurisdiction of the *Plff in Err's* Case to dismiss, which has been affirmed by the 9th Circuit.

If the Supreme Court of the United States does not correct this absolute violation of the *Plff in Err's* inviolate right to have "due process of law" in ***some court arising under the Constitution of the United States under Art. III*** or arising under a court of one of the ***several States***, he is denied access to any court within the boundaries of any of the several States and of the United States when it is incontrovertible that the *Plff in Err's* property has been taken with no known legal duty established or declared by any of the parties. The *Plff in Err* has tried every court available from the Superior Court of Alaska, the USDC, 9th Circuit and now the Supreme Court of the United States to obtain "due process of law" as it pertains to Article IV, sec. 2 protections.

In the adjudged decision of *Cheek v. United States*, 498 U.S. 192, 199, 201-202 (1991) it was held that willfulness is not disjunctive where there must exist a law that is definite and knowable by the defendant; and, that this definite and knowable existing law imposes a legal duty upon the defendant; and, willfulness is not disjunctive with the definite and knowable existing law that imposes the legal duty must be known by the defendant; and, willfulness is not disjunctive that the defendant voluntarily and intentionally violated the known legal duty imposed by the definite and knowable existing law. The federal circuit has ignored what the known legal duty is for the *Plff in Err*, if any exists at all.

The *Plff in Err* has provided conclusively that there is no law that is definite and knowable in existence for the taking of his private property without court judgment, that there is no legal duty established, and no known legal duty has been disclosed to the *Plff in Err, ibid*, and this *has never been disputed by any of the Appellees* during the entire time it has taken to arrive at the Supreme Court of the United States,

being the court of last resort available to correct and protect the private and fundamental rights of the *Plff in Err*.

If the Supreme Court of the United States chooses not exercise it's mandated duty and judicial Power of the United States arising in Article III with the separation of Powers doctrine in this instant Case, then the ultimate fact of the usurpation by Congress is *affirmed* and *held* true by this current Supreme Court of the United States, as stated in *Bowsher v. Synar*, 478 U.S. 714, 761 (1986) Justice White's dissenting opinion "with the advent and triumph of the administrative state ...", for the SSA to be irrevocably applied upon all American subjects, as it stands perpetual in duration.

If there is no Fifth Amendment "due process of law" available today in the several States and the United States for a citizen of one of the several States, then the Constitutional Republic as established and ordained has descended in worth to be similarly compared to the days of the Empire of Rome's collapse from it's own internal corruption and dishonesty. The honored principles in the Constitution were enacted by the sovereign *People* with a limited grant of authority to the United States government. The grantors, being citizens of the several States, cannot and should not become subservient to the grantee (Congress), it being of limited delegated authority, particularly when there is the substitution of the sovereign jurisdiction for that of a dissimilar administrative jurisdiction in an endeavor of creating rights against the United States upon Individuals to limit remedies in court that does not and cannot include citizens of the several States.

Therefore, I pray that this Honorable Court will provide the *Plff in Err* his day in a constitutional Court without loss of jurisdiction of the several States and remand this back to the District Court for remand to the jurisdiction of the Superior Court of Alaska.

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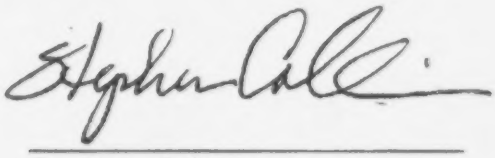
Certification Certificate

This request for Rehearing of the order denying the writ of certiorari based upon the errors of the lower courts is presented in good faith and not for delay. It includes substantial grounds not previously presented.



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